Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers	)	CC Docket No. 00-256
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation	)	CC Docket No. 98-77
Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers	)	CC Docket No. 98-166

COMMENTS OF THE
ASSOCIATION OF COMMUNICATIONS ENTERPRISES

The Association of Communications Enterprises ("ASCENT"),[1] through undersigned counsel and pursuant to Section 1.429(f) of the Commission's Rules,[2] hereby offers the following comments on the petitions for reconsideration and/or clarification of the *Second Report and Order and Further Notice of Proposed Rulemaking, Fifteenth Report and Order and Report and Order*, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Federal-State Joint Board on

[1] ASCENT is a national trade association representing smaller providers of competitive telecommunications and information services. ASCENT was created, and carriers a continuing mandate, to foster and promote the competitive provision of telecommunications and information services, to support the competitive communications industry, and to protect and further the interests of entities engaged in the competitive provision of telecommunications and information services. ASCENT is the largest association of competitive carriers in the United States.

Universal Service, Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation, Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers, CC Docket Nos. 00-256, 96-45, 98-77, 98-166, FCC 01-304 (rel. Nov. 8, 2001) (the "*MAG Order*") filed in the above-referenced proceeding (the "Petition").[3]

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[2] 47 C.F.R. §1.429(f).

[3] Petitions for Reconsideration and/or Clarification were filed by the South Dakota Telecommunications Association; the Western Alliance; the Alliance of Independent Rural Telephone Companies; Plains Rural Independent Companies; the National Exchange Carrier Association, the National Rural Telecommunications Association, the Organization for the Promotion and Advancement of Small Telecommunications Companies and the United States Telecom Association; the Competitive Universal Service Coalition, CenturyTel; and the Rural Consumer Choice Coalition.

Through the *MAG Order*, the Commission, among other things, "created the Interstate Common Line Support mechanism to replace the implicit support for universal service now recovered by rate-of-return carriers through the CCL charge."[4] While noting that "[t]he CCL charge is an inefficient cost recovery mechanism and implicit subsidy that should be removed from the rate structure," the Commission also recognized that it "represents an important revenue stream for rate-of-return carriers, however, recovering interstate loop costs that they cannot otherwise recover due to the existence of SLC caps."[5] The Commission thus held that "conversion of the CCL charge to explicit universal service support is consistent with the mandate of the Act, which provides that universal service support 'should be explicit[]' and would "enable rate-of-return carriers serving rural and high-cost areas to continue providing access to quality telecommunications services at rates that are affordable and reasonably comparable to those in urban areas" and "help provide certainty and stability for rate-of-return carriers and encourage investment in rural America."[6]

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[4] Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Federal-State Joint Board on Universal Service, Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation, Prescribing the Authorized Rate of Return for Interstaet Services of Local Exchange Carriers (Second Report and Order and Further Notice of Proposed Rulemaking, Fifteenth Report and Order and Order), CC Docket Nos. 00-256, 96-45, 98-77, 98-166, FCC 01-304 (rel. Nov. 8, 2001) (*"MAG Order")*, ¶ 128.

[5] Id.

[6] Id.

In connection with the establishment of Interstate Common Line Support, the Commission held that "[t]he disaggregation and targetting of Interstate Common Line Support will encourage efficient competitive entry into the study areas of rate-of-return carriers,"[7] and thus made applicable to Interstate Common Line Support "the geographic disaggregation and targeting of portable high-cost universal service support below the study area level recently adopted in the *Rural Task Force Order*."[8],[9] The Commission further held that "a competitive eligible telecommunications carrier's per-line support amounts will be based on the incumbent carrier's then-current total support levels, lines, disaggregated support relationships and customer classes" and that "the per-line support amounts available to a competitive eligible telecommunications carrier for each zone will be recalculated whenever an incumbent's total annual support or line counts, as indicated by its filings, have changed."[10] Those "general requirements," reasoned the Commission, would "ensure that the

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[7] Id. at ¶ 143.

[8] Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers (Fourteenth Report and Order, Twenty-Second Order on Reconsideration , and Report and Order), 16 FCC Rcd. 11244 (2001), ¶¶ 144-64. The Commission has, however, placed constraints upon the ability of incumbent local exchange carriers to elect disaggregation plans: "[F]or those study areas in which a competitive carrier has been designated as an eligible telecommunications carrier prior to the effective date of these rules, an incumbent carrier may elect a disaggregation plan under Path Three only to the extent that it is self-certifying a disaggregation and targeting plan that has already been approved by the state. In all other instances in which a competitive eligible telecommunications carrier has been designated prior to the effective date of these rules, the incumbent carrier must seek prior state approval of its disaggregation and targeting plan under Path Two. We believe this approach will prevent the anti-competitive targeting of support." (Id. at ¶ 155) "By permitting a carrier to change from this path only upon the approval of a state commission or appropriate regulatory authority, a competitive eligible telecommunications carrier is provided greater certainty as to the level of available per-line support. Moreover, we believe that because a carrier's ability to move to a different path is constrained, a carrier is less likely to elect this path for anti-competitive reasons." ((Id. at ¶ 153).

[9] *MAG Order*, CC Docket Nos. 00-256, 96-45, 98-77, 98-166, FCC 01-304 at ¶ 143.

[10] Id. at ¶ 149.

disaggregation and targeting of support is accomplished in a manner that is consistent with the universal service principles of specificity, predictability and competitive neutrality."[11]

In further deference to the principle of competitive neutrality, after making clear that "[i]n accordance with section 54.307 of our rules, per-loop equivalents of Interstate Common Line Support will be portable to competitive eligible telecommunications carriers,"[12] the Commission acted "to ensure that competitive carriers have the proper incentives to serve all customer classes in a rate-of-return carrier's study area." Specifically, the Commission mandated that "the portable per-line Interstate Common Line Support received by competitive eligible telecommunications carriers will reflect the varying support required to serve each customer class," correlating the "[p]er-line Interstate Common Line Support available to competitive eligible telecommunications carriers" to "the extent to which the rate-of-return carrier's average per-line projected interstate common line revenues requirement exceeds the SLC caps for each customer class."[13]

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11 Id.

12 Id. at ¶ 150.

13 Id. at ¶¶ 152-153.

Despite the Commission's logical extension of the *Rural Task Force Order*'s geographic disaggregation and targeting of portable high-cost universal service support below the study area, and its clear explanation of how that policy will promote the Commission's long-established universal service goals, certain of the petitioners seek reconsideration not of the Interstate Common Line Support mechanism itself, but rather the Commission's determination that Interstate Common Line Support, like other forms of universal service support, are rightfully portable to competitive eligible telecommunications carriers. The Western Alliance, for example, criticizes the Commission's decision by asserting that "[a] portable ICLS mechanism will create regulatory arbitrage that will promote only artificial, non-economic competition that will dwindle or disappear once the windfall 'portable' support is limited, reduced or terminated."[14] The South Dakota Telecommunications Association insists that "[t]he Order's decision to make all rural ILECs' CCL revenues portable to competitors is remarkable in its irrationality,"[15] and the National Telephone Cooperative Association urges the Commission to "suspend implementation of the ICLS portability rule until it has reviewed and revised its . . . definition of competitive neutrality."[16]

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[14] Petition for Reconsideration of the Western Alliance, p. ii.

[15] Petition for Reconsideration of the South Dakota Telecommunications Association, p.6.

[16] Petition for Reconsideration of the National Telephone Cooperative Association, p. ii.

The Western Alliance also asserts that "the Commission ordered per-loop equivalents of Interstate Common Line Support to be made portable to CETCs with virtually no discussion or analysis."[17] This assertion, however, is incorrect. As the foregoing discussion of the *MAG Order* demonstrates, the Commission has sufficiently supported its decision. Indeed, throughout the *MAG Order*, the Commission repeatedly references numerous previous pronouncements issued by the Commission which both reinforced its rationale for the present policy determination and and clearly evince its commitment -- beginning virtually simultaneously with the enactment of the 1996 Act -- to the principle of competitive neutrality as a necessary cornerstone of its policies to promote universal service to all consumers. Indeed, through these previous pronouncements, the Commission has addressed and rejected precisely the arguments which continue to be raised by these rural incumbent local exchange carrier petitioners five years down the road. Those arguments will be no more successful here.

According to the Commission's rules, an "eligible telecommunications carrier" is

> "a common carrier . . . eligible to receive universal support in accordance with Section 254 of the Act" because it "(1) offer[s] the services that are supported by federal universal service support mechanisms under Subpart B of this part and Section 254(c) of the Act, either using its own facilities or a combination of its own facilities and resale of another carriers (including the services offered by another eligible telecommunications carrier) and (2) advertise[s] the availability of such services and the charges therefore using media of general distribution."[18]
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> "A 'competitive eligible telecommunications carrier' is a carrier that meets the definition of an 'eligible telecommunications carrier' . . . and does not meet the definition of an 'incumbent local exchange carrier."[19]

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17 Petition for Reconsideration of the Western Alliance, p. 8.

18 47 C.F.R. § 54.201(d).

19 47 C.F.R. § 54.5.

"Under our rules," the Commission has stated, "a competitive eligible telecommunications carrier serving lines in an incumbent local exchange carrier's service area is entitled to the same amount of per-line support provided to the incumbent."[20] The Commission has also made clear that "as of January 1, 1998, competitive eligible telecommunications carriers are also eligible to receive federal universal service support for serving customers in high cost, rural, and insular areas."[21] This result is compelled by the requirement of competitive neutrality which figures prominently in the Commission's present universal service and access charge regimes:

> In the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act), Congress codified the Commission's historical policy of promoting universal service to ensure that consumers in all regions of the nation have access to telecommunications services. Specifically, in section 254 of the Act, Congress directed the Commission, after consultation with the Federal-State Joint Board on Universal Service (Joint Board) to establish support mechanisms for the preservation and advancement of universal service in the competitive environment that Congress envisions. *The Commission's initial steps were to adapt the existing universal service support mechanisms, which were designed for a monopoly environment, to make support explicit and portable.* . . . Portability of support ensures competitive neutrality by providing that all eligible telecommunications carriers, not only incumbent carriers, are eligible to receive universal service support. Beginning January 1, 1998, the per-line support amount available to an incumbent for serving a high-cost area also became available to a competitive eligible telecommunications carrier for serving lines that it captures from an incumbent carrier, as well as any 'new' lines that the competitive eligible telecommunications carrier services in that high-cost area.[22]

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[20] Federal-State Joint Board on Universal Service (Nineteenth Order on Reconsideration), 14 FCC Rcd. 21664 (1999), footnote 14; 47 C.F.R. § 54.307.

[21] Federal-State Joint Board on Universal Service; Forward-Looking Mechanism for High Cost Support for Non-Rural LECs (Fifth Report and Order), 13 FCC Rcd. 21323 (1998), ¶ 8.

[22] Federal-State Joint Board on Universal Service (Order), 15 FCC Rcd. 8746 (2000), ¶¶ 3-4. (emphasis added); *See also* Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Low-Volume Long-Distasnce Users; Federal-State Joint Board on Universal Service (Order), 15 FCC Rcd. 23614 (2000), footnote 35 ("In addition to the universal service principles specified in the 1996 Act, Congress directed that the Joint Board and the Commission be guided by such other principles as they determine to be consistent with the Act, and necessary and appropriate for the protection of the public interest, convenience and necessity. 47 U.S.C. § 254(b)(7). As recommended by the Joint Board, the Commission

According to the principle of competitive neutrality adopted by this Commission and the Joint Board, universal service support mechanisms and rules should neither unfairly advantage nor disadvantage one provider over another. Consistent with this

adopted competitive neutrality as an additional principle for universal service.")

> principle, the Commission implemented the universal service principles in section 254 of the Telecommunications Act of 1996 (1996) to ensure that interstate access universal service support is 'portable,' in essence, available to all competing eligible telecommunications carriers.[23]

As early as 1997, "[r]ural carriers . . . join[ed] other ILEC commenters disputing the [Joint] Board's recommendation to make support portable to competitive carriers."[24] The Commission observed that "[t]he majority of rural carriers object to providing high cost support to competitive carriers by making the support portable with the customer. Commenters contend that although the Joint Board relies on the principle of competitive neutrality in making this recommendation, granting support to competitive carriers based on the ILECs' support actually would be contrary to the Act and not competitively neutral, because it would give preferential treatment to competitors through an uneconomic subsidy."[25]

The Commission flatly rejected this contention, in language which may be as directly applied as an answer to the contentions of the Western Alliance, the South Dakota Telecommunications Association and the National Telephone Cooperative Association today:

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[23] Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Low-Volume Long-Distasnce Users; Federal-State Joint Board on Universal Service (Order), 15 FCC Rcd. 23614 (2000), ¶ 14.

[24] Federal-State Joint Board on Universal Service (Report and Order), 12 FCC Rcd. 8776 (1997), ¶ 180.

[25] Id. at ¶ 196 (internal footnotes omitted).

> We are not persuaded by commenters that assert that providing support to CLECs . . . gives preferential treatment to competitors and is thus contrary to the Act and the principle of competitive neutrality. While the CLEC may have costs different from the ILEC, the CLEC must also comply with Section 254(e), which provides that '[a] carrier that receives such support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.' . . . If the CLEC can serve the customer's line at a much lower cost than the incumbent, this may indicate a less than efficient ILEC. The presence of a more efficient competitor will require that ILEC to increase its efficiency or lose customers. State members of the Joint Board concur with our determinations regarding the portability of support.[26]

The Western Alliance itself unintentionally lends support to the Commission's position set forth in the *MAG Order*, noting that "[i]n Rural America today, there is virtually no competition between wireline rate-of-return ILECs and wireline competitive local exchange carriers (CLECs). . . the economics of facilities-based competition in the vast majority of the rural study areas of rate-of-return ILECs have not been attractive and are not expected to become attractive within the foreseeable future."[27] As the Commission has made clear, portability of support is an essential element to the development of such competition.

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[26] Id. at ¶ 289.

[27] Petition for Reconsidedation of the Western Alliance, p. 9.

Specifically, the Commission has said that precisely "[i]n order not to discourage competition in high cost areas, we adopt the Joint Board's recommendation to make carriers' support payments portable to other eligible telecommunications carriers."[28] Furthermore, "[t]he Commission has concluded that it is unreasonable to expect a competitive eligible telecommunications carrier to make the substantial investment to enter a specific market and compete against an incumbent carrier that is receiving support without first knowing the amount of support it will be eligible to receive."[29] The *MAG Order* provides that certainty to competitive eligible telecommunications carriers, informing them of precisely the level of Interstate Common Line Support to which they will be entitled for each line captured from an incumbent carrier and each new line that the competitive carrier services in a high-cost area.

The Commission is correct that "competitively neutral rules will ensure that . . . no entity receives an unfair competitive advantage that may skew the marketplace or inhibit competition by limiting the available quantity of services or restricting the entry of potential service providers" and thus has appropriated "reject[ed] assertions that competitive neutrality has no application in rural areas or is otherwise inconsistent with section 254."[30] And as the Competitive Universal Service Coalition notes, "guaranteeing incumbents a revenue 'war chest' that will never

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[28] Federal-State Joint Board on Universal Service (Report and Order), 12 FCC Rcd. 8776 (1997), ¶ 287.

[29] Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Low-Volume Long-Distasnce Users; Federal-State Joint Board on Universal Service (Order), 15 FCC Rcd. 23614 (2000), ¶ 15.

[30] Federal-State Joint Board on Universal Service (Report and Order), 12 FCC Rcd. 8776 (1997), ¶¶ 48-49.

be available to their competitors" would certainly violate the principle of competitive neutrality.[31] The Association of Communications Enterprises urges the Commission, in order to avoid this inequitable result, to reject the petitions for reconsideration of the *MAG Order* to the extent such petitions seek restriction or

[31] Petition for Reconsideration of the Competitive Universal Service Coalition, p. 7.

elimination of the portability of Interstate Common Line Support to competitive eligible telecommunications carriers.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Catherine M. Hannan, do hereby certify that a true a correct copy of the foregoing Comments of the Association of Communications Enterprises has been served by the First Class Mail, postage prepaid, on the individuals listed below, on this 14th day of February, 2002:

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